



In the Supreme Court of the United States

October Term, 1942.

PICKERING LUMBER CORPORATION, *Petitioner*,

vs.

SOPHIA WHITESIDE, ROGER V. WHITESIDE, WILLIAM C. ROBINSON and JOHN D. LAMONT, as Executors of the Last Will and Testament of Robert B. Whiteside, deceased,
Respondents.

**PETITION FOR REHEARING ON PETITION FOR
WRIT OF CERTIORARI TO THE DISTRICT COURT
OF APPEAL OF THE STATE OF CALIFORNIA,
THIRD APPELLATE DISTRICT.**

MAURICE HARRISON,
PAUL BARNETT,
HENRY N. ESS,
Counsel for Petitioner.



In the Supreme Court of the United States

October Term, 1942.

PICKERING LUMBER CORPORATION, *Petitioner*,

vs.

SOPHIA WHITESIDE, ROGER V. WHITESIDE, WILLIAM C. ROBINSON and JOHN D. LAMONT, as Executors of the Last Will and Testament of Robert B. Whiteside, deceased,
Respondents.

No. 633.

PETITION FOR REHEARING ON PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA, THIRD APPELLATE DISTRICT.

Comes now Pickering Lumber Corporation, petitioner, and respectfully prays for a reconsideration by the Court of its order entered February 15, 1943, denying certiorari herein and upon such reconsideration that said order denying certiorari be vacated and writ of certiorari be granted.

This is a plain case where the court below, in the rendition of its judgment, has wholly disregarded a final decree rendered by a bankruptcy court and other bankruptcy proceedings in the reorganization of Pickering Lumber Com-

pany which were specifically set up and claimed by petitioner in the court below and, as a consequence, a federal question reviewable under Section 237(b) of the Judicial Code as amended (28 U. S. C. A. Sec. 344b) is presented. The question is, where claims for the entire unpaid balance of purchase price owing by Pickering Lumber Company, a debtor in reorganization proceedings, on a contract for the purchase of timber lands, as filed by the assignees thereof, are allowed by the bankruptcy court, satisfaction of such claims is duly made by acceptance of securities delivered to such assignees in accordance with the plan of reorganization, which was accepted by them and confirmed by the court in such bankruptcy proceedings, and which plan provides that such assignees shall transfer title to petitioner and such title is transferred and all claims against the debtor in the bankruptcy proceedings and petitioner are barred, may the court below, where such satisfaction, final decree and the vesting of title and the right, title, privilege or immunity conferred thereby and by Section 77B of the Bankruptcy Act (11 U. S. C. A. Sec. 207) were specifically set up and claimed by petitioner, disregard such final decree, satisfaction and barring of claims and treat the case precisely the same as if bankruptcy proceedings had never intervened.

The refusal of the Court to grant certiorari will result in unnecessary uncertainty as to rights conferred and obligations discharged in corporate reorganizations under the Federal Bankruptcy Act. The review of this case involves questions of substantial public importance in the administration of the Bankruptcy Act dealing with the reorganization of corporations. Denial of certiorari will adversely affect the administration of the bankruptcy laws relating to the reorganization of corporations because in the decision sought to be reviewed a state court has denied effect to a final decree vesting title to property and barring

claims rendered by a bankruptcy court in a reorganization case where the bankruptcy court admittedly had jurisdiction of the parties and the subject matter and by its judgment the state court has given the same recognition to the rights of a creditor and has imposed an obligation upon the reorganized corporation precisely the same as if bankruptcy had not intervened. The entire claim upon which respondents' title was based was satisfied by distribution of securities to the assignees to whom and only to whom payment could be made because of an assignment thereof executed by respondents' decedent. The judgment of the court below treats as invalid the final decree of a bankruptcy court rendered in proceedings where the precise obligation in suit was allowed and satisfied and gives to such discharged claim the same force as if such satisfaction had not been made and such final decree entered. If this Court refuses certiorari in such a plain case wherein neither the Act nor the bankruptcy court's final decree have been given effect, then rights conferred in bankruptcy proceedings under the reorganization provisions of the Bankruptcy Act and its administration will be rendered uncertain. A reconsideration of the instant case will make this plain.

Before particularizing with citations to the record we summarize. In brief, First and American National Bank of Duluth, Minnesota, and a Noteholders' Committee, were assignees of respondents' decedent, Robert B. Whiteside, under a written assignment executed by him and his wife covering the entire unpaid balance owing by Pickering Lumber Company under a timber purchase contract dated January 5, 1927, entered into between it and respondents' decedent. As such assignees the Bank and the Committee filed and were allowed claims in the bankruptcy proceedings of Pickering Lumber Company for such unpaid pur-

chase price. Such assignments were executed by respondents' decedent to secure the payment of notes executed by him which were in precisely the same principal amount and bore the same rate of interest as the unpaid balance on the purchase contract. The claims of the respective assignees for the entire unpaid balance of purchase price as allowed by the bankruptcy court were satisfied by the delivery of securities to the assignees in the amount which each was entitled, and the plan of reorganization was duly accepted by them. First and American National Bank, one of the assignees, held in escrow the deed executed by respondents' decedent and his wife, conveying the property to Pickering Lumber Company, which was to be delivered by the Bank to it upon payment of the balance of the purchase price. In accordance with the plan of reorganization and the final decree, the Bank, upon satisfaction of the claims for the balance of the unpaid purchase price, delivered the deed to petitioner, which was organized in pursuance of the plan. Both by the plan and final decree petitioner acquired title to the property covered by the purchase contract and to all of the properties of Pickering Lumber Company free and clear of all of its debts and liabilities.

The judgment of the court below (R. 447) directs:

"that a judgment be entered adjudging defendants (respondents) to be the owners and holders of title to the lands described in the complaint, subject, however, to a lien thereon for any unpaid remainder of the Whiteside notes, and subject, further, to the terms and conditions of the contract of purchase of January 5th, 1927." (Parenthetical expression ours.)

This judgment ignores and gives no effect to the plan of reorganization which was confirmed by the court and which provides that:

"The holders of these notes (the Whiteside notes) will receive Income Bonds, Series 'B,' in the sum of \$105,000, 1,950 shares of Convertible Preferred Stock and 3,000 shares of Common Stock and will transfer title to the Whiteside tract to the Reorganized Company." (R. 64.) (Parenthetical expression ours.)

This judgment ignores and gives no effect to the following provisions of the final decree:

(a)

"8. That First and American National Bank of Duluth shall deliver to Pickering Lumber Corporation, when organized, the deed held by it in escrow under the agreement between Robert B. Whiteside and Sophia Whiteside and the debtor dated January 5, 1927, and the securities to be issued as provided in said Plan of Reorganization in exchange for said deed shall be delivered to said First and American National Bank of Duluth, to be held by said Bank in lieu of the collateral represented by said contract dated January 5, 1927, and the payments due thereunder." (R. 331.)

(b)

"9. That the title to all of the assets and property of every kind and nature whatsoever which by reason of the pendency of this proceeding was vested in T. M. Barham and Clifford Histed, as Trustees herein, by order of this Court or general provision of law, be and the same hereby shall be vested in Pickering Lumber Corporation, a Delaware corporation to be organized as hereinabove set forth, free and clear of any lien or claim of any kind or nature * * *." (R. 331.)

(c)

"4. That the Debtor, Pickering Lumber Corporation, the corporation to be organized under the laws of Delaware, to consummate the Plan, and their successors and assigns, be and they hereby are dis-

charged from all debts, claims or liabilities of every kind and nature whatsoever of said Debtor, or against the property of said Debtor, whether or not such claims have been filed herein, and all rights and interests of creditors and stockholders of the Debtor or against the property of the Debtor, are hereby terminated and ended other than those contracts which have not heretofore been rejected;" (R. 329-30.)

It is entirely clear that the court below, in directing that judgment be entered that respondents were the owners of the real estate, refused to give effect to the specific provisions of the plan of reorganization and the final decree under which title to the property in question was vested in petitioner and all claims against Pickering Lumber Company, the debtor, or petitioner, were barred regardless whether such claims were filed or not. The court below thereby has refused to give any effect whatsoever to these specific provisions of the plan of reorganization and the decree granting a discharge and vesting title. A stronger case for a denial of a right, title, privilege or immunity within the meaning of Section 237(b) of the Judicial Code, as amended, is difficult to imagine. Likewise the judgment of the court below eloquently spells out the necessity of granting certiorari in order to prevent unnecessary uncertainty as to the effect of a corporate reorganization under the Bankruptcy Act and that there is involved in this case a substantial question of public importance in the administration of the Bankruptcy Act. If state courts are to be permitted to disregard a duly confirmed plan of reorganization and a final decree in bankruptcy vesting title to property and barring claims, then the Bankruptcy Act as to corporate reorganizations cannot accomplish its objectives.

The claims for the unpaid balance of the purchase price under the contract of January 5, 1927, and their satisfaction in the bankruptcy proceedings.

On January 5, 1928, Robert B. Whiteside issued \$400,000.00 principal amount of notes under a collateral trust indenture of that date (R. 184-205) and concurrently with the execution thereof executed an assignment providing (R. 206):

"do hereby sell, assign and transfer to the First National Bank of Duluth, as Trustee and as security * * *, all their right, title and interest and the right, title and interest of each of them in and to the sum of Two Hundred Thousand Dollars (\$200,000.00) due January 5, 1930, * * *, and Two Hundred Thousand Dollars (\$200,000.00) due January 5, 1931, * * * payable to Robert B. Whiteside by Pickering Lumber Company, a Delaware corporation, under the provisions of a certain agreement dated January 5, 1927, between the undersigned, as vendors, and the said Pickering Lumber Company as purchaser, and also all of the rights, of first parties covered by said agreement insofar as the same may be necessary or applicable to enforcing payment of said amounts from Pickering Lumber Company."

Subsequent to the execution of the assignment and before the petition in bankruptcy was filed by Pickering Lumber Company on November 30, 1934, it paid to the assignee \$300,000.00 of the unpaid balance of the purchase price, leaving \$100,000.00 of the unpaid balance of the purchase price subject to such assignment (R. 177).

On July 5, 1928, Whiteside issued \$200,000.00 of his notes under a collateral trust indenture with the First and American National Bank of Duluth (R. 207-212) and on the same day executed an assignment covering \$200,000.00 of the unpaid balance under the purchase contract due

January 5, 1932, (R. 213) and containing identically the same provision as the first assignment except as to the amount assigned.

There was unpaid on the purchase contract at the time the bankruptcy proceedings were instituted \$100,000.00 covered by the assignment of January 5, 1928, and \$200,000.00 covered by the assignment of July 5, 1928, which was identically the same amount due under the Whiteside notes (R. 170). Both the notes and the unpaid balance on the timber purchase contract bore interest at the rate of 6% per annum from December 23, 1929 (R. 170).

The First and American National Bank of Duluth filed claim in the bankruptcy proceedings for \$100,000.00 of the unpaid balance on the purchase contract, which was identically the same amount as the unpaid balance on the Whiteside notes dated January 5, 1928 (R. 241-43). It was asserted in the claim (R. 242):

“Payment of all said notes was secured also by that certain agreement * * *, which agreement by its terms assigned to said the First National Bank of Duluth, as Trustee, and as security to the notes hereinabove referred to, all the right, title and interest of said Robert B. Whiteside and Sophia Whiteside, his wife, in and to the sum of \$200,000.00 due January 5, 1930, with interest thereon, and \$200,000.00 due January 5, 1931, with interest thereon, payable to Robert B. Whiteside, by Pickering Lumber Company, under the provisions of that certain agreement dated January 5, 1927, between said Robert B. Whiteside and Sophia Whiteside, his wife, as vendors, and said Pickering Lumber Company, as purchaser, a copy of which agreement is hereto attached, marked Exhibit 2 and made a part hereof.

“Under and by virtue of said agreement Exhibit 1 (the collateral trust agreement) and said agreement Exhibit 2, (the assignment) the above named

debtor, Pickering Lumber Company, was at the time of filing its petition for reorganization under Section 77B of the Bankruptcy Act as amended and still is justly and truly indebted to said First and American National Bank of Duluth, as Trustee under Collateral Trust Agreement dated January 5, 1928, * * * in the principal sum of \$100,000.00 plus interest thereon at the rate of 6% from the 5th day of January, 1932, payable semi-annually on January 5th and July 5th of each year, according to the provisions of said agreement Exhibit 2, until the principal sum and interest as aforesaid are paid in full." (Parenthetical expression ours.)

A claim was also filed by the Noteholders' Committee duly constituted by the holders of the July 5, 1928, notes (R. 262-4) for \$200,000.00 of the unpaid balance of the purchase contract, in which was incorporated by reference similar allegations made in the claims filed by the Bank (R. 262), shown (R. 255).

The claims of the First and American National Bank covering the assigned purchase price of \$100,000.00 and the claim of the Noteholders' Committee covering the \$200,000.00 assigned purchase obligation, constituting the entire unpaid balance of purchase price under the purchase agreement, were duly allowed by the bankruptcy court on February 19, 1937 (R. 177). Thus, the First and American National Bank and the Noteholders' Committee, as assignees, respectively, were allowed claims covering the entire unpaid balance on the purchase contract.

These claims were duly classified in the order classifying claims as class 3 claims (R. 298), a provision was made for their satisfaction (R. 64), and the securities as provided in the plan of reorganization, to be delivered in satisfaction of these claims, were delivered to the First and American National Bank and to the Bondholders' Com-

mittee in the proportions to which they each were entitled, respectively (R. 181). Deed to the lands was deposited with the Clerk in pursuance of the order of the bankruptcy court (R. 334) and afterwards, on order of the court, the deed was delivered to petitioner (R. 335-6).

Respondents' Admissions as to the Assignments.

In their inventory of the Robert B. Whiteside estate filed in the Probate Court of St. Louis County, Minnesota, respondents included the unpaid balance on the purchase contract as an asset and stated (R. 390):

“ ‘Note: This contract was assigned by Collateral Trust Agreement to the First and American National Bank—Duluth as security for Collateral Trust 5½% Gold Notes of R. B. Whiteside and on which there remains unpaid \$300,000.00, and is subject to balance of mortgage to Detroit Trust Co. for \$300,000.00 which the Pickering Lumber Co. assumed as a part of the purchase price.’ ”^{1.}

In their petition filed in the Probate Court of St. Louis County, Minnesota, respondents alleged (R. 286):

“That sometime prior to his death decedent assigned, transferred, and delivered unto the First and American National Bank of Duluth, Minnesota, the said contract, and the balance of the purchase money owing to him thereon, to-wit: the sum of \$300,000.00, in trust as security for the payment of the decedent's promissory notes in like amount, * * *”

It was also asserted therein by respondents (R. 289):

“That by reason of the facts and circumstances hereinbefore related, your petitioners have a bare

^{1.}“This mortgage was satisfied in the reorganization proceedings (R. 330).

equity of redemption in and to the security of said contract and therefore have no claim to make or file in said reorganization proceedings (bankruptcy proceedings of Pickering Lumber Company), all of said contract indebtedness having been assigned by the decedent in his lifetime, and due claims therefor having been made, filed and allowed by the holders thereof as aforesaid; * * *'' (Parenthetical expression ours.)

In their intervening petition filed in the bankruptcy court respondents asserted in paragraph 24 (R. 322):

“That at the time of the institution of the proceedings for the reorganization of Pickering Lumber Company on November 30, 1934, the interveners were creditors of said Pickering Lumber Company under and by the terms of said purchase agreement dated January 5, 1927, in the amount of \$300,000, together with interest thereon in accordance with the terms of said agreement and the extension agreements hereinbefore referred to, subject only to the hypothecation, pledge and assignment of said indebtedness to the respondent, First and American National Bank of Duluth, as trustee, to secure said outstanding collateral trust notes of said Robert B. Whiteside.”

Respondents not only had knowledge of the intended satisfaction to be made of the obligation of Pickering Lumber Company on the purchase contract but participated in the proceedings in the bankruptcy court, and invoked the jurisdiction of that court to consummate the plan under which title to the lands was to be transferred to petitioner.

Respondents specifically stated in their petition in the Probate Court (R. 288):

“That said Bondholders’ Protective Committee has made and submitted to all of the creditors of Pickering

ing Lumber Company a tentative reorganization plan under Section 77B of the National Bankruptcy Act, a copy whereof is hereunto annexed, marked Exhibit 'A,' and made a part hereof; wherein and whereby the indebtedness of said corporation upon said timber purchase contract is recognized and provision therein is made as therein shown on pages 12 and 13, under subheads B and C, for distribution of certain new securities unto the holders of the said obligations of decedent proven and allowed as aforesaid, *and in discharge thereof*, to which reference is made for greater particularity.

That thereupon an order of said court was duly made under date of December 3, 1936, granting leave to file said plan of reorganization in said court, and ordering and directing all claims of claimants and creditors of said bankrupt be proven and filed with the clerk of said court on or before December 26, 1936, and otherwise providing for the admission and allowance of said claims; whereof due notice was given to the creditors, a copy of which notice is hereunto annexed, marked Exhibit 'B' and made a part hereof. That pursuant to the directions of said order due proofs have been made in said proceeding of the several indebtednesses of said bankrupt on the part of the holders of said mortgage of Detroit Trust Company, and the indebtedness secured thereby, and of the First and American National Bank as trustee, and the holders of said notes of the decedent, or their due representatives; which said claims in virtue of said order stand admitted and allowed." (Italics ours.)

It was alleged by respondents that February 19, 1937, had been fixed by the bankruptcy court as the date for consideration of the confirmation of the plan (R. 29). Upon that date the confirming order was entered (R. 302) which provided:

"(e) All creditors of and claimants against the Debtor, whether secured or unsecured, whether or not

affected by the Plan, whether their claims be *ex contractu* or *ex delicto*, whether their claims have been filed or not, and including creditors and claimants who have not, as well as those who have, accepted said Plan of Reorganization."

It was further provided in the confirming order (R. 301):

"(i) That all of the property and assets of the Debtor of every kind and character and wheresoever situated, constitute the property which is dealt with by the Plan of Reorganization;"

Respondents' Intervention in the Bankruptcy Proceedings.

When First and American National Bank of Duluth, Minnesota, sought to sell the assigned timber purchase contract indebtedness, respondents intervened in the bankruptcy proceeding, praying that the threatened sale be enjoined. They invoked the jurisdiction of the court on the ground that should such sales take place and (R. 324)

"unless the purchaser or purchasers, whoever it or they might be, at such sales, should they take place, be willing to carry out said Plan of Reorganization of said Pickering Lumber Company, it will be impossible to consummate and carry out said Plan of Reorganization and that, therefore, the action of said trustee, in advertising said indebtedness and rights for sale, is a threat to the consummation of said Plan of Reorganization and in dereliction of its assent to said Plan of Reorganization heretofore filed in this Court and in violation of such acceptance."

The bankruptcy court enjoined the sales by an order entered March 17, 1937, (R. 326-7) and on March 27, 1937, the same date the final decree was entered (R.

327-332), the bankruptcy court entered an order affirming the injunction previously granted but dismissed the intervening petition without prejudice as to the controversies therein between respondents and the First and American National Bank of Duluth, Minnesota, as to whether or not the Bank should satisfy its claims on the Whiteside notes allowed against the Whiteside estate (R. 333). There was never any contention by anybody that the effect of the execution of the plan of reorganization would not vest title to the real estate in the petitioner.

Conclusion.

The record is undisputed that claims for the entire unpaid balance of the purchase price owing on the purchase contract by Pickering Lumber Company were satisfied by satisfaction effected with the assignees thereof who were the only persons with whom such satisfaction could be lawfully made. The satisfaction and discharge of the obligation for the payment of the unpaid balance of the purchase price on the purchase contract as made in the bankruptcy proceedings has been treated by the court below as being wholly ineffective to accomplish a discharge. The plan of reorganization and the final decree of the bankruptcy court barring claims and vesting title to the real estate in question has been ignored by the judgment of the court below.

We submit that a substantial question of public importance is involved and that the refusal of this Court to grant certiorari will result in unnecessary uncertainty in the administration of the reorganization provisions of the Bankruptcy Act. This Court clearly has jurisdiction under Section 237(b) of the Judicial Code, as amended, and the cases cited in petitioner's brief to grant certiorari.

It is therefore respectfully submitted that the order of this Court entered February 15, 1943, denying certiorari be vacated and upon reconsideration that the writ of certiorari issue.

MAURICE HARRISON,
PAUL BARNETT,
HENRY N. ESS,
Counsel for Petitioner.

Certificate of Counsel.

I hereby certify that this petition is presented in good faith and not for delay.

HENRY N. ESS,
Counsel for Petitioner.